

88-113

NO.

Supreme Court, U.S.

FILED

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JOSEPH E. SPANIOLE, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

EARLENE POLYAK

Appellant

VS

JIM HAMILTON,
INDIVIDUALLY AND IN
JUDICIAL CAPACITY, AS
CIRCUIT JUDGE, AND THE
CIRCUIT COURT OF LAWRENCE
COUNTY

Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

EARLENE POLYAK
3179 Middlefield Drive
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7592



QUESTIONS PRESENTED

1. Does the United States Court of Appeals affirming of the District Court's granting "absolute immunity" to State Judge in the sale of pro se litigant's property without compensation, jury trial, or appeal as a right, deny her due process and deprive her of civil and constitutional rights and laws, and render the state statute on which she relies invalid and repugnant to the constitution?

2. Should the Court of Appeals affirm the District Court's granting of "absolute immunity" to State Judge in "taking" of pro se litigant's properties for sale and injunction against any litigation regarding her properties in the District Court?

3. Is the sale of pro se litigant's properties without any compensation and appeal in violation of the "taking clauses" in the Fifth and Fourteenth Amendments And should Appellant have been notified of time, place and date of sale?

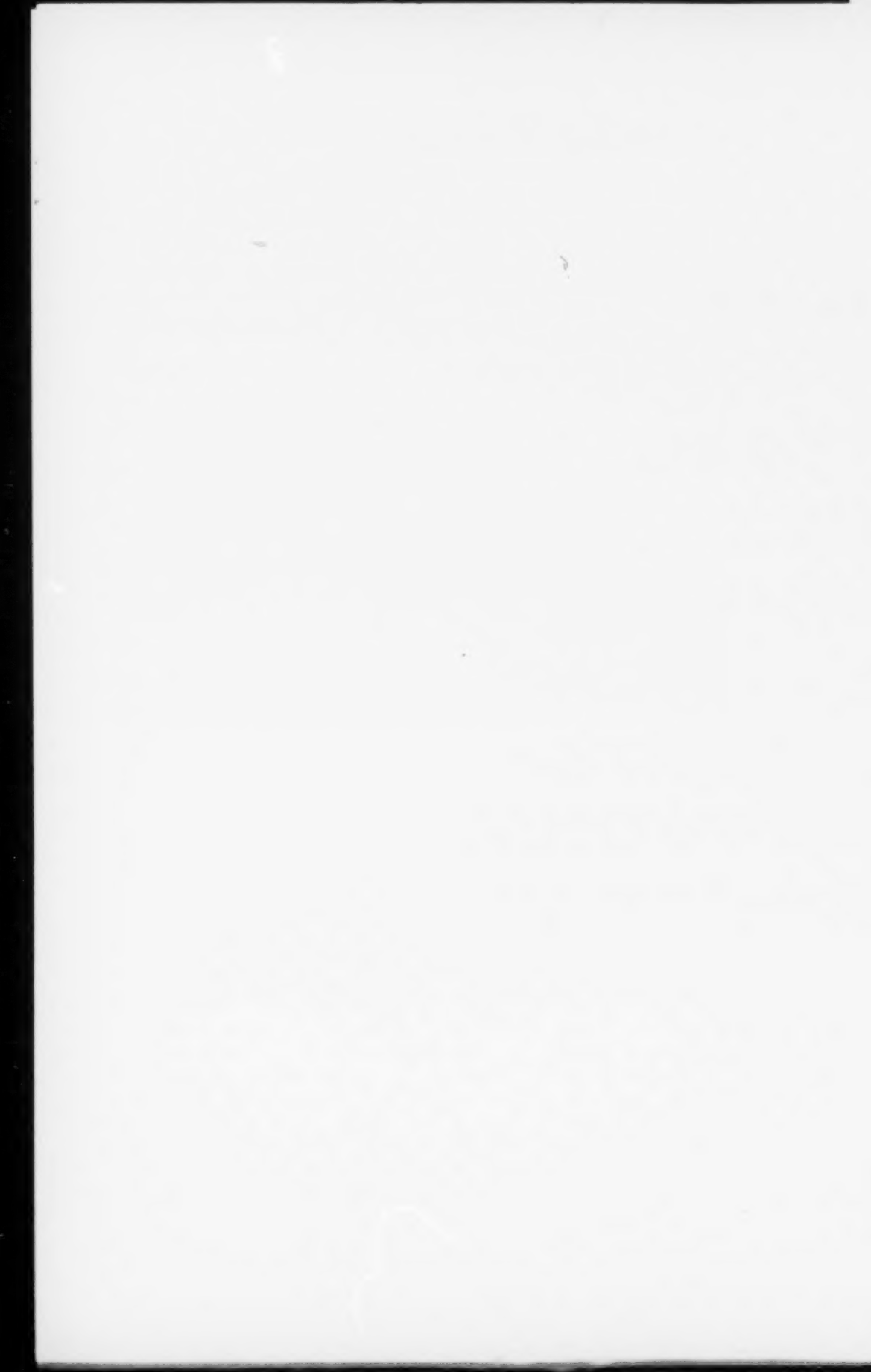
4. Should the State Judge be liable to pro se litigant for the denial of due process and deprivation of civil and constitutional rights and laws?

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JURISDICTIONAL STATEMENT
PARTIES TO THE PROCEEDINGS

Appellant below is Earlene Polyak, Appeal No.
87-6115, District No. 1:85-0016.

Appellees below are Jim T. Hamilton and the
Circuit Court of Lawrence County, Tennessee.

Companion Cases: Buford Evans & Sons v Earlene
Polyak(Counter-Claim) No. 1:85-0120; Earlene Polyak
v Thomas Stack Henry Henry & Stack No. 1:85-0125:
Earlene Polyak v William Boston, boston boston Bates
& Holt No. 3:85X-108.

Appeal No. 86-5536; No.86-5460,And No. 86-5462
RE: Earlene Polyak.

All of the above cases arise out of Frank Hulen
and Wilma Lesnansky v Earlene Polyak No. 1:84-0082,
and 1:84-0083.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit are set forth in Appendix A. The opinions of the United States District Court for the Middle District of Tennessee are set forth in Appendix B. And the pertinent opinions in companion cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals was issued on February 23, 1988, and the Petition for Rehear En Banc was denied on April 21, 1988. This brief is being submitted within ninety(90) days thereof.

This appeal is taken pursuant to 28 U.S.C 1254(2). And Notice of Appeal was filed 27,1988.

The jurisdiction of this Court is invoked pursuant to Article III, Sec. 2, which states that the juridicial power shall extend to all cases of law and equity, between a state and citizens of another state; and between citizens of different states.

The jurisdiction is invoked under 42 U.S.C. Sec.

1981, 1982, and 1983; 28 U.S.C. 1443(1)(2); 28 U.S.C. 2403; 5 U.S.C. Equal Access to Justice; Fifth; Seventh; and Fourteenth Amendments, and Rule 60(b) Federal Rules of Civil Procedure.

The federal civil and constitutional questions were timely raised in the defense of the sale of Pro Se Litigant's real and personal properties against state statute without jury trial and appeal ever being heard by State Officer. The sale of these properties without any compensation and denial of due process and the deprivation of civil and constitutional rights and laws is in violation of the "taking clauses of the Fifth, Seventh and fourteenth Amendments.

The loss of pro se litigant's real and personal properties is an irreparable damage and the loss of a right and interest to never be regained in her retirement home.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

No... person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.
U.S. Const. Amen. V, cl. 3 & 4.

The pertinent portion of the Seventh Amendment provides as follows:

...where the value in controversy shall exceed twenty dollars, the right of jury trial shall be preserved...

U.S.Const. Amen VII.

The pertinent portion of the Eight Amendment provides as follows:

... nor excessive fines, nor cruel and unusual punishment inflicted.

U.S. Const. Amend. VIII.

28 U.S.C. Any of the following civil actions.. commenced in a state court may be removed by defendant to District Court....

(1) Against any person who is denied or cannot enforce in the courts of such state a law providing for equal civil rights of citizens of the United States or of all persons within its jurisdiction.

(2) for any act under under color of authority deprived from any law providing for equal right

42 U.S.C..Sec. 1981:

All persons within the jurisdiction of the United States shall have the same right in every state to make and enforce contracts, to sue... to the full and equal benefit of all law

42 U.S.C. Sec. 1982:

All citizens of the United States shall have the same right in every state...to inherit, hold, purchase lease and convey real and personal property.

42 U.S.C. Sec. 1983:

Every person who under the color of any statute, ordinance, regulation, custom or usage of any state...subject or caused to be subjected any citizen of the United States or other person within its jurisdiction thereto the deprivation of rights and privileges or immunities secured by the constitution and laws, shall be liable to the party in the action at law in equity or some other proper proceedings for the parties.

28 U.S.C. 2403:

In any action ... where the constitutionality of a statute of that state affecting public interests is drawn into question.

TENNESSEE CODE ANNOTATED:

If exact partition cannot be made without material injury to the parties or some one of them (the commissioners), may make partition as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares...(1932).

RULE 3, TENNESSEE CODE ANNOTATED:

Appeal of final decisions are of right and lie to the Court of appeals...and Supreme Court.

Except Rule 54.02 TRCP.

If multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all of the claims or rights and liabilities of fewer than all parties is not enforceable or appealable.....

RULE 5 TRCP AMENDED:

On August 15, 1984, deleted the requirement that a Notice of Appeal be filed with the Clerk of the Court of Appeals.

RULE 60(b) FEDERAL RULES OF CIVIL PROCEDURE,
MISTAKES; INADVENTURE; EXCUSABLE NEGLIGENCE; NEWLY
DISCOVERED EVIDENCE: FRAUD, ETC.

On motion and such terms as are just, the Court
may relieve a party or his legal representative
from a final judgment, order, or proceeding...

28 U.S.C. 1651(a)...all writs necessary in jurisdiction

STATEMENT OF THE CASE

The second order for sale of pro se litigant's
real and personal properties at "Public Auction" for
invalid lien upon her "interest therein" was before
the Honorable Jim Hamilton, who had already signed
the first order for sale over her objections without
any compensation, when she petitioned for review of
this and companion cases by the United States Court
of Appeals. She petitioned the District Court to set
aside all orders pending review

The District Court sanctioned the sale of pro se
litigant's properties with an injunction "enjoining
her from any further litigation regarding the sale of
her property in Lawrence County on November 13, 1985,"
and granted state judge "judicial immunity" (App. C. 34).
She contends she has been denied due process and
deprived of civil and constitutional rights and laws
and suffers irreparable damages and the loss of a

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right interest and investment to never be regained in her retirement home, Chancery No. 1974.

Appellant was subjected to initial unfair and unjust hearing while acutely ill with heart failure in 102 degree heat-wave and nationwide warning, in which Judge Hamilton verbally ordered property sold without any compensation. After this appeal dismissed she petitioned District Court No. 1:84-0082.

After this appeal was dismissed without hearing, Appellant submitted complaint for right and kind in severalty supported by Tennessee Statute and case law Distruct Court No. 1:84-0083 Earlene Polyak v Frank Hulen and Wilma Lesnansky. Judge Wiseman dismissed this case without hearing after Robert Boston again submitted materials from 1974 as res judicata (AppCp39).

These cases were consolidated on appeal on Robert Boston's motion in the Court of Appeals No. 84-6090(1:84-0082) and 84-5032/5101/5147(1:84-0083), and dismissed in docket control. The Supreme Court denied appeal to pro se litigant.

After Appellant started trying to defend herself she learned that a layman is prohibited in the Courts of Tennessee and was obligated to seek federal protection under diversity of citizenship.

This SECOND ORDER to sell Appellant's property for invalid lein upon her "interest therein" was submitted to Judge Hamilton on August 21, 1987(App. C.p.22)All of her efforts to remove order within thirty days and Complaint and counter-claim were disregarded in the District Court No. 1:87-0075 Frank Hulen and Wilma Lesnansky v Earlene Polyak.

The FIRST ORDER to sell property settled by agreement to divide between cotenants in 1976, after William Boston, Boston Bates & Holt who represented the family, divided loyalties and appeared against Appellant on July 29, 1983, was prepared by Boston Bates & Holt(App.C. p. 28).

Thi FIRST ORDER, Chancery No. 1974, Frank Hulen and Wilma Lesnansky v Earlene Polyak was held by Boston Bates & Holt July 29, until October 19, 1983, and signed by William Boston, Thomas Stack, Henry, Henry & Stack and over Appellant's ^{cooperation} that she was not awarded any compensation to Judge Hamilton.

Appellant raised the constitutional question that she had been subjected to an UNFAIR AND UNJUST HEARING IN WHICH HER PROPERTY WAS TAKEN to Thomas Stack within three days after on on August 2, 1983. and again to Judge Hamilton after she assumed her

own defense on December 19, 1983. Judge Hamilton instructed pro se litigant to get appeal in to judgment on that day within ninety(90) days. She appealed UNAPPEALABLE JUDGMENT prepared by Boston Bates & Holt and signed by Charles Holt and Judge Hamilton on December 20, 1983(App.C. p. 25).

Pro se litigant's appeal was dismissed by the Court of Appeals in Tennessee on UNAPPEALABLE JUDGMENT on April 26, 1984(App.C. p.26).

On December 26, 1984, Appellant was scheduled to defend herself against Buford Evnas & Sons lawsuit in March 1985, but Judge Hamilton again subjected her while acutely ill with heart problem and acute bronchitis to trial against physician's recommendation to go to a warmer climate. Judge Hamilton disregarded motion for continuance Affidavit, and Appellant's son and husband brought her from Florida in the back seat of car on pillows Circuit Court No. 10647 Buford Evans & Sons v Earlene Polyak.

On October 10, 1984, Gerald Wilson, Circuit Court Clerk demanded that Appellant bring a copy of deed to solely owned forty(40) acres of land before he would allow appeal to Circuit court. Buford Evans & Sons entered upon her land without her knowledge or

permission and conducted invalid survey. Mr. Evans.. alleged that Mr. Stack retained him to survey land but hand-drawn map to show property could be divided equally and partitioned in kind correlates in Tract #3 with Item #2, in order to show property could not partitioned in kind prepared by Boston Boston Bates & Holt(App. C.p. 28). and App. C. p. 30).

On December 26, 1984, Appellant again raised the constitutional question of due process when she confronted Judge Hamilton before this trial. Judge Hamilton held this judgment from December 26, 1984, until August 7, 1985, and denied her Motion to for- records to the Court of Appeals to appeal to bais and prejudice on November 7, 1985.

On December 26, Appellant found what appeared to be a denial of her objections to the sale of her property in 1974 Chancery in Circuit Nos.10611, Earlene Polyak v William boston Boston Bates & Holt and 10612 Earlene Polyak v Thomas Stack Henry Henry & Stack signed by Judge Hamilton on October 9, 1984.

On September 9, 1985. Appellant's notice of appeal to Buford Evans 10647 was returned by the by the Court of Appeals as Rule 5(a) amended on August 14, 1984 to delete the requirement that

Notice of Appeal be filed with the Court of Appeals on August 14, 1984(App. C. p. p. 31).

Appellant believes that this amendment allows for DISCRIMINATION AGAINST SEX, RACE, NON-RESIDENT AND PRO SE LIGIGANT AND IT IS UNCONSTITUTIONAL.

After Judge Hamilton denied Appellant's Motion to forward Records for appeal against what she believed to be a prejudiced and biased judgment on November 7, 1985, she appealed to the United States District Court under diversity of citizenship.

On November 8, 1985, Appellant filed Complaint in the District Court No. 1:85-0116 Earlene Polyak v Jim Hamilton, Individually and in Judicial Capacity as Circuit judge and the Circuit court of lawrence County.She removed and joined under 28 U.S.C. 1441(c) to 1:85-0116, Buford Evans & sons v Earlene Polyak (Counter-claim) No. 1:85-0120, Earlene Polyak v Thomas Stack Henry Henry & Stack No. 1:85-0125, and Earlene Polyak v William boston boston Bates & Holt No. 3:85X-108.

The Honorable Thomas A Wiseman dismissed 1:85-0116 within five days without hearing or argument, and enjoined Appellant from filing further cases in the United States District Court "regarding her property

in Lawrence County on November 13, 1985.

Appellant filed this complaint for the denial or due process and the deprivation of civil and Constitutional rights and laws. The Court of Appeals disregarded Appellant's appeal to the enjoin by Judge Wiseman and affirmed the order of November 13, 1985, and dismissed this appeal in docket control on August 15, 1986. The Supreme Court denied filing of briefs in appeal to 85-6134 and briefs returned.

Judge Wiseman dismissed no. 1:85-0120 and remanded to the state on without hearing on November 26, 1985. Appellant appealed remand under 28 U.S.C. 1443, but case dismissed in docket control after a conversation between lawyer and Ms. Yvonne Henderson Case Supervisor before briefs. She allowed petition for rehear but case dismissed again in docket control. Supreme Court denied appeal and petition for rehear.

Judge Wiseman allowed filing case 1:85-0125 on allegations of negligence and malfeasance. Judge denied restraining order for sale of property but appealed to the Court of Appeals and denied in docket control and writ of certiorari denied by the Supreme Court. The Honorable Thomas A Higgins allowed jury trial, but rendered directed verdict on May 6,

1987. Appellant submitted a Motion for a New Trial, but denied and case presently on appeal to Court of Appeals.

Case No. 3:85X-108 denied filing on enjoin of November 13, 1985. Appellant submitted Writ of Mandamus No. 86-5460 to schedule jury trial in 1:85-0125 and No. 86-5462, William Boston, Boston Bates & Holt in the court of Appeals.

Judge Wiseman issued Order on May 2, 1986, enjoining Appellant again and closing cases. Appellant appealed enjoin on November 5, 1985 No. 86-5536, but Court of Appeals disregarded appeal again in docket control. This dismissal was appealed to the Supreme Court but denied.

In the letter to John P. Heham, Clerk of court of appeals on April 30, 1986, Judge wiseman stated that enjoin on November 13, 1985, " That order was entered because of previous filings of Mrs Polyak against various persons in this Court(App.C.p.33).

Appellant believes that Judge Wiseman is referring to the various lawyers who handle cases in the state and federal court in Columbia, Tennessee, which is located in the same building. The Honorable Thomas A Higgins finally filed case against William

Bostom, boston Bates & Holt No. 1:86-0036, but close case on July 1, 1986. Appellant submitted petition for rehear but denied on April 17, 1986, and she appealed to the Court of Appeals, but denied in dock control. This case was denied in the Supreme court, pending again before the District Court.

All of the above cases arise out of initial order to sell property without any compensation or jury trial and the appeal to this sale has never been heard in any Court. Judge Hamilton verbally ordered property sold on July 29, 1983, and order for sale was prepared by Boston Bates & Holt. Judge Hamilton signed UNAPPEALABLE JUDGMENT prepared by Boston Bates & Holt. Appeal was dismissed in Court of Appeals Tennessee on UNAPPEALABLE JUDGMENT on April 26, 1984.

Robert Boston son of William Boston, Boston, Bates & Holt submitted instruments as completed order and 1:84-0082 dismissed, and again in 1:84-0083, dismissed as res judicata and awarded costs and attorney fees used for invalid lien(App. C. p.42).

The order on April 26, 1984, is not a final order and Robert Boston has submitted Second Order and pro litigants property sold see Affidavit(App. B.p.20)

REASONS WHY QUESTIONS
REQUIRE PLENARY CONSIDERATION

1. The United States Court of Appeals affirms the District Court's granting state judge "absolute immunity" in the denial of due process and the deprivation of civil and constitutional rights and laws of the pro se litigant and renders state statute on which she depends invalid and repugnant to the constitution.

The Court of Appeals affirms the Honorable Thoman A Wiseman granting the Honorable Jim Hamilton, State Judge "absolute immunity" in the denial of due process and deprivation of civil and constitutional rights and laws to pro se litigant in the "taking" of her properties and renders Tennessee Statute on which she depends invalid and repugnant to the constitution under 42 U.S.C. 1983.

The State Judge ordered property divided in settlement by agreement initiated by cotenants in 1976, which is supported by Tennessee Statute, sold within two hours while the jury was out on another trial and all of the evidence before the Court. As a result of 1976 settlement by agreement, Appellant has restored forty-six (46) year old house and maintained it to this day (12) years at her own expense for a retirement home. The sale of this

property is an irreparable damage an the loss of a right to never be regained in pro se litigant's retirement home.

Appellant's right to her partition in kind of this property is supported by Tennessee Statute:

29-27-117. If exact exact partition can not be made without material injury to the parties, or some on of them.... may make the partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares. Tennessee Code Annotated 1932.

Appellant relies on statute for her investment in partition and kind and severalty in retirement home for twelve years.

The Court... may in accordance with the wishes of one or more of the cotenants, order an allotment of shares ... in "kind and severalty" and direct the sale of the other portion if it is not susceptible to partition in kind. Vandenburg v Molder, 4 Tenn. Civ. App. Higgins 111 (1919).

Appellant is in possession of this partition of land and intains to this day at her own expense. "Courts in almost all states in such circumstances have granted 'specific performance' Hagerty v Haggerty Tenn. 172 259 (1919). "... Courts have said possession and making improvements constitutes "good consideration in equity." Lindell v Lindell, (1919) Tenn. 135 368. And recent Tennessee case supports partition in kind" Parole partition of land followed

by possession is binding and enforceable. Martin v Taylor, 521 S.W. 2d 582

Appellant believes rights and interests in her properties are protected by the constitution:

No... person shall be deprived of ...property without due process of law; nor shall private property be taken for public use without just compensation.

...the right of jury shall be preserved....

And ...Nor shall any state deprive any person of life liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of its laws.

The first order to sell properties valued at over sixty thousand(\$60,000.00) dollars without any compensation to pro se litigant was signed by Judge Hamilton over her objections on October 19, 1983, and Thomas Stack Henry Henry & Stack, prepared and signed by William Boston Boston Bates & Holt. A Second Order for lien upon Appellant's "interest therein" was submitted by Robert Boston, son of William Boston, Boston Bates & Holt, on August 21, 1987.

Appellant believes that her properties have been sold without any compensation, jury trial and the appeal never being heard and the federal courts deny federal protection.

Congress intended 1983 to be an independent

protection for federal rights and there is nothing to suggest that Congress intended to extend the common law of judicial immunity to insulate the state judge completely from federal review. United States v Detroit, 200 US 321 26 S Ct. 282 287 50 L Ed 499.

2. The United States Court of appeals affirms the District Court's grant of "absolute immunity" to state judge in the denial of due process and civil and constitutional rights in properties in "enjoin" and sanctions with the dismissal and denial of all appeals in docket control.

After Appellant suspected that third lawyer was trying to help "take" property for sale at "Public Auction" she was obligated to assume her own defense. Judge Hamilton instructed pro se litigant to get her appeal in within ninety(90) days to the judgment prepared by Boston Bates & Holt on December 19, 1983. She was denied New Trial and UNAPPEALABLE JUDGMENT SIGNED BY Mr. Holt and Judge Hamilton on December 19, 1983, as a result appeal never heard before sale.

Appellant's appeal to the sale of her properties without jury trial new trial and compensation for her investment was denied as a result of UNAPPEALABLE JUDGMENT SIGNED BY Judge Hamilton in the Court of Appeals, Tennessee on April 26, 1983,... was not a final judgment appealable as a right under Rule 3 TRAP. Robert Boston submitted as final judgment ^{to} Court.

In the hearing

July 29, 1983, William

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Boston, Boston Bates & Holt divided loyalties, and Appellant was taken across county lines for hearing in Columbia, while acutely ill due to exposure on heart failure and nationwide warning against 102⁰F. (2) Wilma Lesnansky signed complaint but did not testify; (3) husband did not get to testify about the settlement by agreement (4) and hearing was not given adequate time and consideration.

Thomas Stack Henry Henry & Stack did not enter bills for restoration, memorandum brief, evaluation of property or prepare a transcript of the proceedings.

On December 26, 1984, Appellant was subjected to another trial for invalid survey when Buford Evans & Sons went upon her property without her knowledge or permission. Mr Evans alleges Thomas Stack retained him to survey property to prove partition in kind, but hand-drawn map correlated with order to sell prepared by Boston Bates & Holt showing showing property could not be divided and supporting sale.

On December 26, 1984, Appellant found what appears to be a denial of pro se litigants objection to the sale of her property in Chancery 1974 in Circuit Court on Nonsuit Nos. 10611 Earlene Polyak v William Boston Boston Bates & Holt and No. 10612 Earlene

Polyak v thomas Stack Henry Henry & Stack signed by Jim Hamilton on October 9, 1984. Appellant was not in Lawrenceburg on that date.

When Judge Hamilton denied Appellant's motion to forward records to the Court of Appeals, Tennessee for appeal of unjust and unfair trial in which she was denied due process civil and constitutional rights and laws she submitted a complaint against Jim Hamilton and the Circuit court of Lawrence County 1:85-0116(Appeal 84-6134).

Appellant joined under 28 U.S.C. 1441(c) to 1:85-0116; Buford Evans & Sons v Earlene Polyak(Counterclaim) 1:85-0120(Appeal No. 85-6135; Earlene polyak v Thomas Stack Henry Henry & Stack 1:85-0125(Appeal 86-5199 apart thereof in Denial of Restraining Order by Judge Wiseman) and 3:85X-018 Earlene Polyak v William boston Bates & Holt.

Judge Wiseman dismissed 1:85-0116 within five days of filing and enjoined pro se litigant from filing further complaints in the District court, on November 13, 1985, In a letter to John P. Hehman Clerk of the Court of appeals on April 30, 1986, Judge Wiseman stated, "That order was entered because of previous filings of Mrs. Polyak against various

persons in this Court. she.... should be severely sanctioned therefor No. 86-5460 and 86-5462, Appeal No. 86-5536. Appellant believes Judge Wiseman is referring to the Division of the United States District Court in which the state and federal courts are located in the same building and Judge presides, above lawyers handle cases in Columbia, Tennessee.

The Court of Appeals affirmed "injunction in which Judge Wiseman did not give pro se litigant date, time or place to defend herself and continues to deny in the dismissal of this Petition for Review En Banc and Petition for Rehear En Banc. No. 87-6115.

This injunction against Appellant violate 42 U. S C. 1981 ... right to sue,and inherit hold, purchase lease and convey real and personal proerty and the denial of due process and deprivation of civil and constitutional rights and laws...1983.

Appella nt requested this Court review in 87-6115 this injunction which was disregarded and av ded in Appeal no. 85- and No. 86-5536 Re: Earlene Polyak v Judge iseman, This appeal was styled Frank Hulen et al v Earlene Polyak which the District Court styles all pro se litigant's appeal and the Court of Appeals upholds regardless of numerous motions to correct.

Appellant appealed **enjoin** on November 1985, in No. 85-6134, but the Court of appeals disregarded with only a mention in the order filed on August 15, 1986, order dismissing appeal affirmed in docket contr

In light of prior actions filed by the plaintiff the Court enjoined plaintiff from filing, without Court permission, any future actions arising from state litigation. the plaintiff filed this appeal from that portion of the order dismissing the underlying action.

And in further abuse of discretion by the Court of Appeals and another dismissal in docket control of Appellant's appeal to the **enjoin** by judge Wiseman's May 2, 1986 order closing cases in the District Court filed on November 24, 1986, claimed lack of jurisdiction alleging Plaintiff trying to choose judge.

Judge Wiseman entered an order prohibiting the plaintiff from filing future actions relating to the partition sale without prior approval of the Court...Judge wiseman entered order May 2, 1986 rescuing himself from all matters involving the plaintiff. He also ordered the Judge to whom the cases were reassigned should be provided with all previous orders, including injunctive order.Even assuming this court had appellate jurisdiction to review rescul order....the plaintiff had no right to have her cases heard by a particular Judge...

Pro se litigant appeals affirming of abuse of discretion by District Judge by United States Court of appeals and the denial of due process and

the deprivation of civil and constitutional rights and laws in filing complaints against the "taking" of her property and the severe sanction for this abuse of discretion.

Appellant's do not contend that state officials are immune from suits to restrain unconstitutional acts undertaken in their official capacities. the law clearly recognizes the right of an interested party to force state officials to act in accordance with the constitution. Jorden v Gilliam, US 500 F 2d 701 705(6th Cir. 1974).

3. The United States Court of Appeals affirms the District court's support of the "taking" of pro se litigant's property without just compensation jury trial or appeal ever being heard by various persons in in enjoin on November 13, 1985.

The Court of Appeals affirms the District Court's support if the "taking" of pro se litigant's properties without jury trial, any compensation and appeal ever being heard in the denial of due process and deprivation of civil and constitutional rights and laws. by various persons in the state. Judge Wiseman instructed that injunction be provided and the Honorable Thomas A Higgins resumed cases and finally filed complaint against William boston boston Bates & Holt No.1:86-0036 on May 12, 1986.

Appellant believes that Judge higgins resumed case with the same prejudice and bias as Judge

Wiseman and in this order she was guilty by enjoin and case closed on July 17, 1986, 1:86-0036. She appealed closing part of order, but Court of Appeals again contended lack of jurisdiction supporting Judge Higgins ruling that before pro se litigant could open case, she must produce medical certificate establishing physical ability... Appella No. 86-5916.

On August 29, 1987 Judge Higgins remanded Complaint and Counter-claim v Second Order to sell property for Robert Boston's invalid lien upon her "interest therein" to Judge Hamilton No. 1:87-0075.

On April 1, 1988, Appellant learned that Travel Trailer and properties had been sold at private sale and order was not entered without notification jury trial and compensation without appeal ever being heard. It appears that this advertisement was run in Advocate while she was in Florida for health, but she kept lawyers and Courts informed as to her whereabouts at all times (See Affidavit App.

the court of Appeals has power in Rule 60(b) Federal rules of Civil Procedure to relieve a party from final judgment order, or proceeding and Appellant has submitted many cases involving this "taking" of her properties to the Court. She has (2) presented newly discovered evidence (3) misrepres-

entation, and misconduct of adverse parties(5) prior judgment on which appeal was dismissed is UNAPPEALABLE JUDGMENT prepared by Boston Bates & Holt and signed by Judge Hamilton. These motions were timely and the Court of appeals by its own motion can declare orders, judgments, or proceedings NULL AND VOID., and reverse Judge's order for JURY TRIAL.

The Court of appeals has power under 1651(a) to issue all writs necessary or appropriate to aid their jurisdiction to prevent irreparable damage and prevent this grave miscarriage of justice.

The Court of Appeals may treat any proceeding as a petition and Appellant petitioned for review of all cases arising from UNAPPEALABLE ORDER prepared by Boston Bates & Holt and signed by Judge Hamilton in 87-6115 and the sale of her properties without jury trial or appeal ever being heard.

When a party attempts to appeal from an unappealable order, and circumstance, justify Court's doing so, Court of Appeals in its own discretion, may treat the proceedings as a petition ... Cord v Smith, C A Cal 1964 338 F 2d 516.

Appellant believes that sale of her partition of property without jury trial and appeal ever being heard is a grave miscarriage of justice.

Power granted to the court of Appeals under this section... there are present extraordinary circumstances which which require issuance of extraordinary writ to prevent grave miscarriage of justice. Hartley Ten Co. v U.S. Dist. Court for Southern District of Cal., C.A. 1961.

The sale of Appellant's property without jury trial to determine damages and just compensation and appeal as a right ever being heard is an irreparable damage and the loss of a right to never be regained in her retirement home.

Court of Appeals has power to grant necessary relief and aid of the jurisdiction to prevent irreparable damage. Harris v Gibson, C A Ga. 1963 322 F 2d 780 376 US 908.

CONCLUSION

Appellant is seeking relief for the denial of due process and deprivation of civil and constitutional rights and laws and the irreparable damage as set forth in the initial briefs. As a direct and proximate result of the denial of due process and the deprivation of civil and constitutional laws and rights, Earlene polyak has suffered damages by the way of mental anguish and emotional stress on her damaged heart; pain and suffering; humiliation and embrassement in trying to defend her right to her property pro se without jury trial and appeal as a right, loss of ordinary pleasures of life, and the

loss of a right and interest to never be regained
in her retirement home.

On the 15th day of July 1988.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

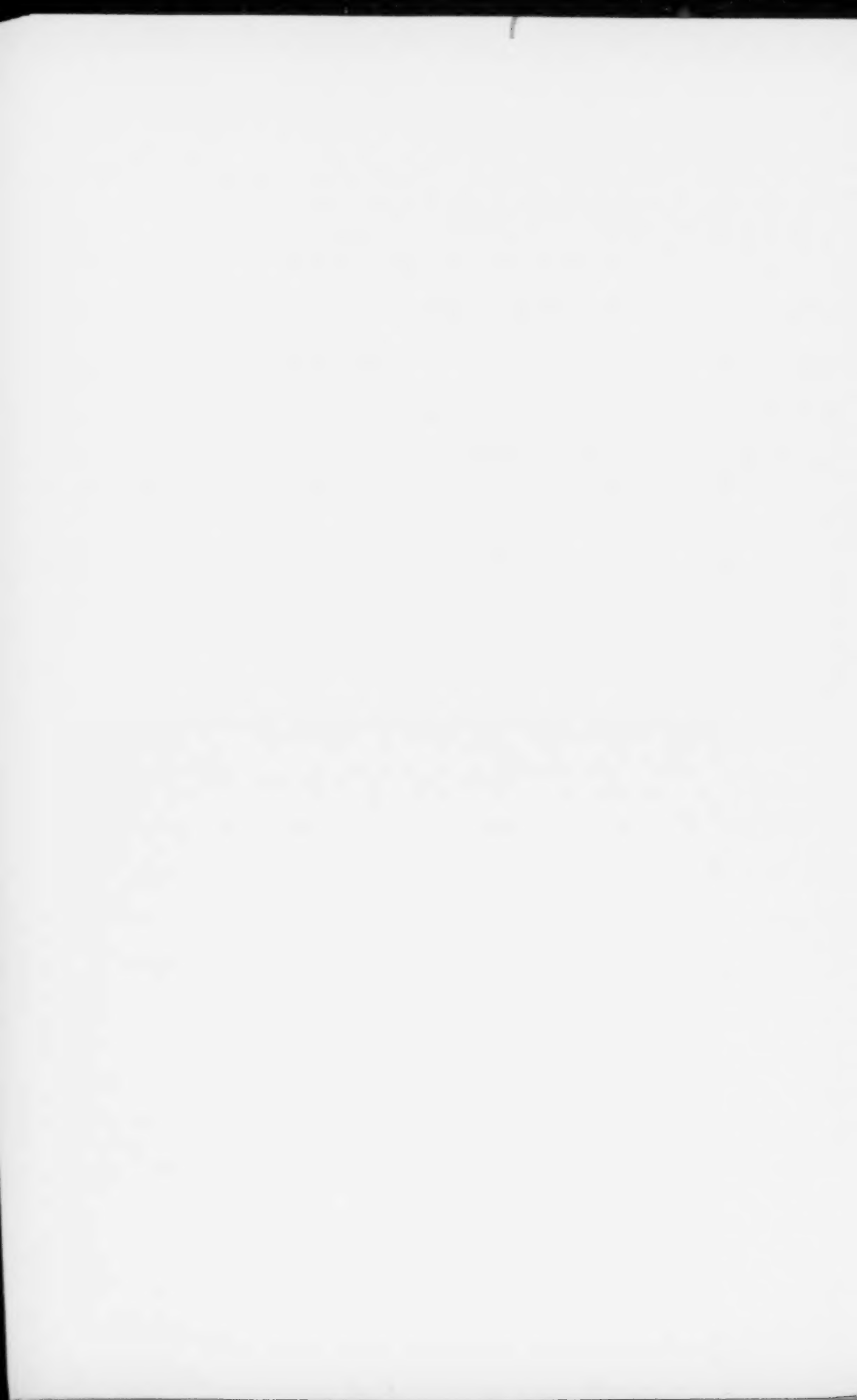
Certificate of Service

I certify that a true copy of this pleading has
been mailed First Class to Mr. W.J. Cody General
General, Nashville, Tennessee 37219, and all parties
of interest in this cause.

STATE OF MICHIGAN
COUNTY OF WAYNE

My commission expires: _____
NOTARY PUBLIC

BEST AVAILABLE COPY



APPENDIX A

In the United States Court of Appeals for the Sixth circuit.

Earlene Polyak v Jim Hamilton, Individually and in Judicial Capacity As Circuit Judge, and The circuit court of Lawrence county.No. 87-6115.

Dismissed in docket control for the Second time on February 23, 1988.

Denied Petition for Rehear En Banc on April 21, 1988.

Before: MARTIN and NORRIS, Circuit Judges and PECK,Senior Judge.

This Petition for Review En Ban . of the decisions of the United States District Court and conflicting decisions in different case by the Court of appeals was submitted to the Court of Appels. The Court of Appeals affirms the sale of property without any compensation, jury trial and without appeals to the decision of a state judge in a quick hearing and affirms the District Judge granting " absolute immunity"

Appellant believes she has been denied due process and deprived of civil and constitutional and laws without federal protection property sale.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED APRIL 29, 1988

Appellant

v

No. 87-6115

JIM HAMILTON, INDIVIDUALLY AND
IN JUDICIAL CAPACITY AS CIRCUIT
JUDGE AND THE CIRCUIT COURT OF
LAWRENCE COUNTY

NOTICE OF APPEAL

Appellant Earlene Polyak gives notice of appeal to the denial of the order and petition for rehear on April 21, 1988. She appeals the denial of due process and deprivation of civil and constitutional rights and laws in the affirming the District Court granting of "judicial immunity" to state trial judge in conflict of interest and failure to rescue. this involves companion cases. this court of appeals has dismissed all cases in docket control, and finally misleads pro se litigant who paid fee to appeal with promise of help in PRO SE APPELLANT'S APPLICATION, which she believes is used in forma pauperis. Appellant appeals to the supreme court of the United states.

This appeal is taken pursuant to 28 U.S.C.1254

On the 27th day of april, 1988.

Signed Earlene Polyak

Certificate of Service to Mr. Michael Cody, Attorney General, Nashville, Tennessee 37219.

BEST AVAILABLE COPY

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

FILLED

Case No. 87-6115

OCT 19, 1987

Case Name. Earlene polyak v Jim Hamilton Individually
and Judidical capacity as Circuit Judge and the
Circuit court of Lawrence County.

PRO SE APPELLANT'S BRIEF

Directions: Answer the following questions about the
appeal to the best of your ability. use additional
sheets of paper, if necessary. You need not limit
your brief soly to this form, but you sjould be
certain that the document you file contains answers
to the questions below. If you are asking for a
specific relief such as appointment of counsel, the
provision of the transcript at government expense, or
leave to proceed without filing fees please make that
request at the conclusion of your brief. The Court
prefers short and direct statements. Within 28 days
you should return your completed brief t:

The Office of the Clerk

United States Court of Appeals, sixth circuit
524 U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

- (1) Did the District court fail to consider important
Grounds for relief, If so what grounds?

Complaint grounded in denial of due process and
the deprivation of civil and constitutional rights
and laws under the color of usage.

the amenement of Rule 5(a) TRAP allows for dis-
crimination against race sex non-resident pro se
litigant and unconstitutional. It allows for manu-
lative dismissals in the denial of appeal as a



federal rights and does not insulate state trial judge from review. 1983 provides that every person under color of usage subjects any person to deprivation of constitutional rights and laws "shall be liable " to the party injured in action at law or equity.

Judge Wiseman enjoined pro se litigant from filing complaints 1981, right to sue 1982.

(4) Do you feel that there are any reasons why District court wrong?

The District Judge dismissed complaint within five days of filing without any hearing. Disregarded diversity of citizenship, and the fact that Plaintiff sought federal protection, when she could not obtain relief in state courts from the denial of due process and the deprivation of civil and constitutional rights and laws.

(5) What action do you want the Court to take?

District Court did not hold jury trial to determine damages or whether state responsible for denial of due process and the deprivation of civil and constitutional rights and laws and determine damages for its agents. Since the district Court has failed to provide plaintiff independent protection for federal rights the responsibility lies within

the Court of Appeals. Damages were set forth in initial complaint. Plaintiff believes that this Court can affirm or order jury trial.

(6) Do you think this Court should hear oral argument

Plaintiff is pro se litigant and does not have any knowledge or expertise in the legal profession. She does not have any expertise in preparing briefs and she believes oral argument would bring about a better understanding of her case before the Court.

I certify that a copy of this brief was sent to opposing counsel via U.S. Mail on the 28th day of September 1987.

Note: Appellant paid for this appeal from the District Court, but she believes that this form may be used with Formia Pauperis, which is a discrimination against her in the Court of appeals. This form was sent by the Clerk in the court of Appeals and when she questioned the use, the clerk stated that it was something to help pro se litigant.

The Court of Appeals has never heard oral argument, en banc or ruled in Appellant's favor in any case and all cases dismissed or denied in docket control.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

v Plaintiff-Appellant

No. 87-6115

JIM T. HAMILTON, INDIVIDUALLY
AND IN HIS JUDICIAL CAPACITY, AS
CIRCUIT JUDGE, AND CIRCUIT COURT OF
LAWRENCE COUNTY

Defendant-Appellees

Before: MARTIN And NORRIS, Circuit Judges and Peck,
Senior Judge.

The court having received a petition en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehear en banc, the petition has been referred to the original hearing panel.

the panel has further reviewed petition for rehear en banc and concludes that the issues in this petition were fully considered upon original submission and decision of the case. Accordingly petition is denied.

entered by order of the court.

No. 87-6115

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

v

JIM T. HAMILTON, INDIVIDUALLY
AND IN HIS JUDICIAL CAPACITY
AS CIRCUIT JUDGE, AND
CIRCUIT COURT OF LAWRENCE COUNTY

Defendants-Appellees

Before: MARTIN and NORRIS, Circuit Judges; and PECK
Senior Circuit Judge

This matter is before the court upon consideration of the appellees' motion to dismiss the appeal. Appellant has filed a response and supplement to grounds for relief.

A review of the record and the files indicates that the decision of the district court was entered on November 13, 1985. Appellant's appeal from that decision was docketed as appeal number 85-6134. This court affirmed the district court's decision on August 15, 1986, and denied Appellant's petition for rehearing en banc on October 23, 1986. Petition for writ of certiorari was denied on July 29, 1987, and this court's mandate issued on September 16, 1987. A Petition for review en banc dated September 28, 1987.

BEST AVAILABLE

seeking review of this court's August 15, 1986, decision was returned by this court to the Appellant on October 1, 1987 without filing. On September 29, 1987, the appellant filed a petition in the district court seeking seeking to have that court set aside this court's August 15, 1987, order pending review of several related appeals pending in this court. the September 29 document was forwarded by the district court to this court and docketed as appeal 87-6115.

Although the September 28, 1987, petition requests the district court to review this court's decision in appeal number 85-6134, the brief on appeal seeks to have this court review its August 15, 1986, decision on appeal number 85-6134. En Banc review of that decision was previously sought and denied. The mandate was issued September 16, 1987. Once a mandate issues, this court's jurisdiction ceases to exist. *United States v. PiLapi*, 651 F.2d 140 (2nd Cir. 1981). Cert denied 455 U.S. 938 (1982). This court does not have jurisdiction to consider an en banc petition for rehearing of the decision in 85-6134, which was filed under the guise of a new appeal,

It is ORDERED that motion to dismiss be granted. and appeal dismissed. Rule 8, Rules of the Sixth Circuit
ENTERED BY ORDER OF THE COURT

- 10 -
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

EEARLENE POLYAK

Plaintiff-Appellee

v

Appeal No. 87-6115
D.C. No. 1;85-0116

JIM T. HAMILTON, INDIVIDUALLY
AND JUDICIAL CAPACITY AS JUDGE
AND THE CIRUIT COURT OF
LWRENCE COUNTY

Defendants-Appellees

MOTION TO DISMISS

WJ. Michel Cody, Attorney General for the State of Tennessee, on behalf of Defendants-Appellees, moves to dismiss Appeal No.87-6115 for lack of jurisdiction, pursuant to Fed.App.P.27 and 6th Cir. 8, and in support of this motion states as follows:

1. by a copy of a letter to Ms. Earlene Polyak dated october 9, 1987, Defendant-Appellees were notified that the court had docketed Appeal No. 87-6115, styled earlene Polyak Plaintiff Appellant vs Jim T. Hamilton, et al. Defendants -appellees, D.C. No. 1:85-0116. By that letter, counsel for Defendant Appellees was notified of a briefing schedule requiring Appellees' brief to be received by the Clerk by December 4, 1987.

2. On october 19, 1987, the clerk of the United States Court of Appeals for the Sixth Circuit

BEST

redeived a document from Earlene Polyak titled "Petition for Review En Banc and Set Aside Order and captioned Earlene POLyak Petitioner v Jim T. Hamilton, Individually andin hid judicial Capacity as Circuit Judge, and the Circuit court of Lawrrence County. that document was filed on the same date as Appellant's brief on Appeal 87-6115.

3. On November 8, 1986, Plaintiff-Appellant Earlene Polyak filed Court No. 1:85-0116 against the Defendants Judge Jim T. Hamilton because Defendant Judge Hamilton failed to hold in favor of the Plaintiff Appellant in action involving the sale of her property in the Circuit court of Lawrence County. On November 13, 1985 United States district Judge Thomas A. Wiseman entered an order denying relief sought by Plaintiff-Appellant dismissing district No. 1:85-0116 and enjoining Plaintiff-Appellant from filing any other actions in the U.S. District court for the Middle District of Tennessee regarding the sale of property in Lawrence county without express permission of the Court.

4. In Appeals No. 86-5536, this court upheld District court orders entered in district No. 1:85-0116 by an order of this Court filed on November 24,

1986, and issued as mandate on January 15, 1987.

5. The dismissal by the United States District Court for the Middle district of Tennessee of Dist. No. 1:85-0116 was affirmed in Appeals No. 85-61 by an order filed August 15, 1986 and issued as mandate on September 16, 1987.

6. As district Court No 1;85-0116 has been dismissed and that dismissal has been upheld on appeal, there is no district court order or action in District No 1;85-0116 from which Plaintiff-Appellant can currently appeal.

7. If this appeal is treated as an appeal of the District No. 1;85-0116, the notice of appeal was not filed within the time required in Rule 4 of the Federal Rules of Appellate Procedure.

8. Appeals No. 87-6115 is a duplicate appeal of Appeal no. 86-6134 as indicated by a reading of the documents filed by Plaintiff-Appellant and the caption on all documents for appeal no 87-6115 used both the Clerk of this Court and the Plaintiff-Appellant.

9. Appeals No 87-06115 is also a duplicate appeal of appeal No. 86-5536, insofar as it addressed orders entered in No. 1:85-0116.

Wherefore, It is prayed that the Court grant this and dismiss appeal 87-6114 for lack of Jurisdiction
Nov. 25th Certificate of Service to Earlene Polyak

- 13 -
APPENDIX B

Earlene Polyak(313)676-3364
3179 Middlefield Drive
Trenton, Michigan 48183

September 21, 1987

Ms. Juliet Griffin, Clerk
United States Court of appeals
Nashville, tennessee 37203

Re: Petition for review Jim Hamilton et.al.
1:85-0116.

Dear Ms. Griffin;

I am submitting a a Petition to set aside order
dismissal and enjoining from filing any further
litigation in the District Court regarding the sale
of my property in Tennessee issued on November 13,
1985, pending review in the U. S. Court of Appeals.

After learning that Robert Boston
has placed an order to sell my property in Chancery
Court,submitted two leins, and that Buford Evans has
filed leins, I submitted a complaint and demand for
a jury trial on August 27, 1987. I have made bond for
\$1000.00 in chancery Court and my husband and I
signed bond for two times alleged amount owed Buford
Evans on December 26, 1984. It is my understanding
that Mr. Evans has bragged that he is going to sell
my property with his lein.

I tried to reach you this week, but Ms. Carolyn
Deputy Clerkverified the filing fee of \$120.00 had
been received on Wednesday. Ms Morris informed me

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that above complaint was being held because of the above order on November 13, 1985(INJUNCTION).Although i have tried to appeal this order with two appeals I am submitting the above review and a petition to set aside order(November 13, 1985).

I reminded Ms. Morris that the Honorable Thomas A. Higgins has been served with motion to disqualify but i was told that this was not possible.I am concerned that Judge Higgins did not get my motions aas I have submitted many motions in different cases and none of them have been acted upon.

Although I made bond, the Clerk of the Supreme Court of Tennessee has demanded that I pay for each appeal. I certainly have paid for all complaints and appeals in federal courts.

I am enclosing the required docket feeto review Case No. 1:85-0116 of \$120.00.

Please call the United states court of Appeals and verify that docket fee of \$120.00 has been received.

Respectfully yours,
Signed Earlene polyak

cc: Mr. Joe Brown, United States Attorney.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

V

Dist. No. 1:85-0116
Appeal No. 85-6134

JIM T. Hamilton, INDIVIDUALLY,
AND JUDICIAL CAPACITY, AS CIRCUIT
JUDGE AND THE CIRCUIT COURT OF
LAWRENCE COUNTY

PETITION TO SET ASIDE ORDER
AND FORWARD RECORDS FOR REVIEW

Appellant Earlene Polyak, petitions this court to set aside the order on the United States Court of Appeals on August 15, 1986, affirming the dismissal of complaint in the above styled case, and enjoining her from further litigation regarding the sale of her properties in Lawrence County on November 13, 1985, pending review in the Court of appeals. she petitions for review of 1:85-0120(85-6135)(Counter-claim, Buford Evans & Sons v Earlene Polyak joined to 1:85-0116 by 28 U.S.C. 1441(c). And joined cases No. 1:85-0125 Earlene Polyak v Thomas Stack, Henry Henry & Stack and No. 3:85X-108 Earlene Polyak v William Boston, Boston Bates & Holt with the above case.

appellant petitions this court to set aside above orders pending review of 1:85-0116 and 1:85-0120 with parts of above cases including liens filed in chancery and Circuit Courts in Lawrence county.

On the 28th day of September, 1987.

Earlene polyak(313) 676-3364
3179 Middlefield Dr.
Trenton, Michigan 48183

Certificate of Service

I certify that a true copy of the pleading has been mailed to Michael J. Cody, Nashville tennessee, 37219, The Honorable Jim Hamilton, Lawrenceburg Tennessee 38464, and the Court of appeals, Cincinnati Ohio 45202.

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Juliet Griffin October 2, 1987 615-736-7763
Clerk

MsYvonne Henderson
Office of the clerk
Court of appeals for the Sixth circuit

Re: Polyak v Hamilton

Dear Yvonne:

As we discussed in our telephone conversation of October 1, 1987, we are sending a transmittal form and the petition to Set Aside Order and Forward Records for Review, filed in this office on September 29, 1987. Ms. Polyak seeks review of several cases but is not appealing from a specific order in any of these cases. therefore, we are unable to send to you any orders from which an appeal may lie, as we ordinarily do.

We are forwarding to you only one transmittal form on case no 1:85-0116, although you may note that, in the petition, Ms. Polyak also seeks review of three additional cases.

Also as we discussed in our telephone conversation of October 1, 1987, Ms. Polyak has sent the \$105.00 appeal fee to us. Sincerely,

Signed Juliet Griffin

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

V

JIM HAMILTON ET AL

No. 1:85-0116

ADDITIONAL RECORDS TO BE FORWARDED FOR REVIEW

BUFORD EVANS & SONS(counter-claim)	1:85-0120
THOMAS STACK HENRY HENRY & STACK	1:85-0125
WILLIAM BOSTON BOSTON BATES & HOLT	3:85X-108
FRANK HULEN AND WILMA LESNANSKY V EARLENE POLYAK	1:84-0082(87-0075)
FRANK HULEN ET AL	1:84-0083
WILLIAM BOSTON BOSTON BATES & holt	1:86-0083
RE . HONORABLE THOMAS A WISEMAN	86-5536

AMENDED PETITION TO SET ASIDE ORDER
AND FORWARD RECORDS FOR REVIEW

Appellant petitions this Court to set aside the order of the court of Appeals on august 15, 1986, affirming the dismissal of the complaint in above case and enjoining her from filing further litigation in the District Court regarding the sale of her property in Lawrence County on November 13, 1985, pending re-with companion cases listed above. She petitions for review of 1:85-0116, with joined cases under 28 U.S.C. 1441(c) 1:85-0120,(Counter-claim) 3:85X-108 and companion cases 1:84-0082 1:84-0083(1:87-0075) 1:86-0036 and Appeal No. 86-5536.

Appellant petitions this Court to set aside all above orders pending review of 1:85-0116 and 1:85-0120 with companion cases, including the intervening circumstance of leinsfiled in the Chancery and Circuit courts of Lawrence County No. 1:87-0075. She contends these records pursuant to Rule 11(g) Court of appeals are all needed in review.

The amendment of the petition to set aside orders and forward records for review is pursuant to Ms. Juliet Griffins error when she construes review as an appeal. The records in 1:85-0120 contains a transcript of the proceeding of the denial of due process and deprivation of civil and constitutional rights and laws in 1:85-0116, and 1:85-0120.

Appellant has made bond \$1000.00 Chancery Court and two times amount alleged owed in 1:85-0120, which were disregarded in leins to sell at Public Auction.

Appellant contends that her property has been ordered sold at Public Auction without jury trial or appeal ever being heard.

On the 14th day of october, 1987.

Signed Earlene Polyak(313) 676336
Certificate of Service

I certify that true copy of this pleading has been mailed to the Court of appeals, Cincinnati, Ohio 45202 and MR. Michael cody Attorney General, Nashville, Tennessee 37219.
signed Earlene Polyak

BEST AVAILABLE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED JUNE 21 1988

V

No. 1:85-0125

THOMAS STACK AND
HENRY HENRY & STACK

AFFIDAVIT

To whom it may concern:

My name is Mary Mitchell. I live at R#3 Box63-B
Lawrenceburg, Tennessee 38464.

On or about September through November 1987, I
was reading my newspaper, the Lawrence county Advocate
when a familiar name caught my eye. The name of the
person was Earlene Polyak. Realizin I had met her
on about three occasions in th pas., I read more out
of curiosity. The articde was non-resident notice of
some sort. the contnetsof the article revealed the
intent to sell some property that sounded familiar to
me. In some correspondence from Earlene Polyak, some
years ago, she had revealed to me that she owned a
mobile home situated on some property here in Lawrence
County, Tennessee.

Upon meeting her agains some 6 months after I
had read the article, I causally mentioned it to her.



At this time she informed me that she knew nothing of this.

this is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this 18th day of June, 1988.

Signed Mabel Evelyn Hedgepath

NOTARY PUBLIC

APPENDIX C

Note: Appendix C is composed with Second order to sell property, UNAPPEALABLE JUDGMENT, dismissal of appeal and First Order to sell property and related materials from companion cases.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

Plaintiffs

vs

Civil Action No 1974

EARLENE POLYAK

Defendant

ORDER

Upon motion of the plaintiff to sell that parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said order having been affirmed through all stages of the appellate process, it is hereby ordered as follows:

1. Col. eulan Hooper is hereby authorizes and dirdeted to advertise, on behalf of the parties herein the sale of land described in Ex.1 herto under the following terms and conditions of this order: Mr. Hooper will advertise said in a newspaper of general circulation in the Lawrence county Advocate, said sale to be conducted at public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advdrtisements, and not less than 21 days following the entr of this order. Said advertisement shall run in no less than three

separate issue of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for cash, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Courton the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into

the registry of this Court , the Clerk and Master shall divide the net proceeds of the sale equally among the parties hereto, after having paid Euahn Hooper a fee for his services in connection with said auction as ordered herin in the amount of 6 per cent of the gross amount received at said auction plus reimbursement for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of \$250, and shall pay, from defendant's portion of the proceeds , al court costs incurred since this case was initially filed. Thereafter, the clerk and master shall pay to the parties herto the net amount due each party pursuant the court's order of partition, subject, however, to payment by the Clerk and master of debts of all creditors of record of any party who have a lein against any interest in said land as a result of lein's against a party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further orders of the Court.

So ORDERED THIS ____ DAY OF September, 1987

Approved for entry,

Signed Robert Boston

Hon. Jim T. Hamilton Circuit Judge

On 21st day of August
to Earlene Polyak Certificate of Service

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL

PLAINTIFF

V

CICIL ACTION NO. 1974

EARLENE POLYAK

DEFENDANT

JUDGMENT

This cause came on to be heard on this the 19th day of December 1983, before the honorable jim T. Hamilton, Judge upon the motion this day filed by the defendant, personally in her own behalf, statement and argument of the Defendant, personally from all of which the Court finds there to be no merit, and said motion is here and now overruled in its entirety.

This the 19th day of December, 1983.

Signed Jim T. Hamilton

JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of this pleading has been served upon the defendant at interest in this cause by delivering a true and exact copy...I addressed to said counsel at his office with sufficient postage...

The 19th day of December 1983.

BOSTON BATES & HOLT

Signed Charles Holt

Entered Dec. 19, 1983

Book page 294

BEST AVAILABLE COPY

IN THE COURT OF APPEALS OF TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

Plaintiff-Appellees

v

Lawrence Equity

EARLENE POLYAK

Defendant-Appellant

ORDER

Om March 20, 1984. an order was entered by this Court granting a rehearing in respect to the order entered on March 2, 1984, dismissing appeal for failure to timely file a notice of appeal with the Trial clerk; the parties have filed briefs for rehear

And it appearing from the record that Appellant motion to alter or amend was heard on December 19, 1983 that on January 3, 1984, appellant filed a notice of appeal from the final judgment entered on December 20, 1983, but that the order overruling appellant's motion to alter or amend was not entered until January 10, 1984;

And it further appearing that this situation is governed by TRAP Rules 4(b) and 21(b) which read as follows:

Rule 4(b) Termination by Specified timely motion in civil actions --in civil action if a timely motion under TRCp is filed in the trial court by any party:(10 under ruel 50.02 for judgment in

in accordance with a motion for a directed verdict(2) under rule 52.02 to amend or make additional findings of fact(3) under Rule 59.03 to alter or amend judgment; or(4) under Rule 59.01 for a new trial, the time for appeals for all parties shall run from the entry of the order denying a new trial or granting or denying any such motion. A notice of appeal filed before the filing or disposition of any of the above motions shall have no effect. The party making the motion after notice of appeals is filed shall move in trial court for an order dismissing appeal. A copy of the order of dismissal by the trial court shall be filed by the moving party with the clerk of the appellate court. A new notice of appeal must be filed within the prescribed time measured from the order disposing of motion as provided above.

Rule 21(b) Extension of time--For good cause shown the appellate court may enlarge the time prescribed by these rules or by its order for doing any act or may permit any act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal prescribed in rule 4, and application for permission for appeal prescribed in rule 11, or a petition for review prescribed in rule 12.

And it further appearing from that judgment from which appeal is sought is not a final judgment appealable as a right under TRAP Rule 3

It is therefore ordered that this appeal be and is hereby dismissed at the cost to the appellant

ENTER April 26, 1984

Signed
Judge Henry F. Todd
Judge Samuel L Lewis
Judge Ben H. Cantrell
Judge Lewis H. Conner

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiffs

VS

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, While holding Chancery Court for Lawrence County Tennessee, upon complaint hereto filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different

types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Evaln Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of Oct. 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack

that it is not shown to include the entire contents
the in and a building - however - including it

<p>13.26 AC \$11,249.00</p> <p>Bean Field</p> <p>Dwelling</p> <p>BARN</p> <p>Bean Field</p> <p>TRACT ①</p> <p>495'</p>	<p>15.57 AC \$11,223.00</p> <p>Bean Field</p> <p>TRACT ②</p> <p>589'</p>	<p>12.47 AC \$11,223.00</p> <p>Bean Field</p> <p>TRACT ③</p> <p>464'</p>
--	--	--

over \$9.00

under 7.00

under 7.00

17

Mr. Ramsey Leathers Clerk
100 Supreme Court Building
Nashville, Tennessee 37219

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

RE: BUFORD EVANS

VS

~~EARLENE PLOYAK~~

We are returning herewith the copy of the notice of appeal forwarded to this office in the above case.

An amendment to Rule 5 (a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
MAY 2 1986

IN RE:
EARLENE POLYAK

ORDER

I hereby rescue myself from all matters involving Mrs. Earlene Polyak. These matters are to be returned to the clerk for reassignment. The judge to whom these matters are assigned should be furnished with all previous filings and closed cases involving Mrs. Polyak including order of the undersigned enjoining her from filing further cases for the purpose of consideration of whether a show cause order should issue to her to show cause why she should not be held in contempt of such order.

Signed Thomas A. Wiseman Jr.

This order was appealed on May 7, 1986, and after waiting for a briefing schedule, which did not arrive after motions and telephone calls a brief was filed by Petitioner. The Honorable Thomas A. Higgins, District court refused filing copy of brief and it was returned.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

April 30, 1996

Mr. John P. Hehman, Clerk
United States Court of Appeals
U.S.P.O. & Courthouse
Cincinnati, Ohio 45202

Re. Case No. 86-5462 Mrs Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman:

This petition complains of the action of the undersigned in failing to file and issue process on a complaint for Mrs. Polyak against William E. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs Polyak to show cause why she should not be held in contempt of the previous Order of November 23, 1985, whereby Mrs Polyak was enjoined from filing any further suits in this Court arising out of the partition sale of her property in Lawrence County. That Order was entered because of previous filings of Mrs Polyak against various persons in this Court, all stating essentially the same facts, and arising out of state court proceedings which had been fully litigated and adjudicated. I felt Mrs. Polyak was abusing the process of the Court. My decision has been reinforced by the petitions for

writ of mandamus received today. She has taken an inordinate amount of this Court's time to the detriment of other litigants and should be severely sanctioned therefor.

I have rescued myself concerning Mrs. Polyak and a copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,

Signed Thomas A. Wiseman

Note: Judge Wiseman presides at the Columbia, Tennessee Division of the United States District Court for the Middle District of Tennessee, which is located in the same building as the State Court. Petitioner believes Judge Wiseman is referring to the Columbia Court in which The Honorable Jim Hamilton presides over state cases, and cases are handled by William Boston, Boston Bates & Holt, and Thomas Stack Henry Henry & Stack (Buford Evans was retained by these lawyers). The petitions for writ of Mandamus were submitted to schedule jury trials in No. 86-5460, William Boston Boston Bates & Holt and No. 86-5462, Thomas Stack Henry Henry & Stack in United States Court in Nashville.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NOV 13 1985
BY Sheri Tipton
Deputy Clerk

EARLENE POLYAK
vs

Civil Action No. 1:85-0116
Judge Wiseman

JIM T. HAMILTON, Individually and
in his judicial capacity as
Circuit Judge, Jointly and
severally, and The
CIRCUIT COURT OF LAWRENCE COUNTY

MEMORANDUM

The Court has before it a civil action filed November 8, 1985 against" Jim T. Hamilton, Individually and in his judicial(sic) capacity as Circuit Judge, Jointly and severally, and the Circuit Court of Lawrence County." Plaintiff has asked for a Restraining Order to restrain the sale of property in Lawrence County which has been the subject of litigation by plaintiff before the defendant, Hamilton, in the Circuit Court of Lawrence County. Also requested a "Protective Order" from any "further acts of wrong doing(sic) intimidation or retaliation, during her travel and care of her property in Tennessee. And that she be allowed to present herself in Court when, and if her health and wheather(sic) permits."

She also seeks compensatory damages.

The Court has considered the application for extraordinary relief and finds the petition lacking in the first prerequisite for such relief, that is, a showing of probability of success on merits. Such applications are denied. This is the third attempt by this plaintiff to relitigate issues that have been fully adjudicated in state court. In Frank Hulen v Earlene Polyak, No. 1:84-0082 (M.D. Tn), plaintiff sought to remove to this Court from the Supreme Court (Chancery Court of Lawrence County), Tennessee, a partition decree by Judge Hamilton. That case was dismissed by this Court for untimely removal. Mrs Polyak then filed again in this Court in the case of Earlene Polyak v Frank Hulen et al., No. 1:84-0083 seeking to enjoin the sale of land. That case was dismissed on grounds of ~~res~~ judicata. Both of these cases have been appealed to the Sixth Circuit Court of Appeals.

The present action seeks to enjoin the sale by a personal action against state trial judge, alleging violation of civil rights.

This plaintiff is abusing the process of this

Court. The basis thrust of her complaint is to enjoin the sale of property by partition, a matter she has taken to the Supreme Court of Tennessee and lost(Supreme Court did not hear appeal, Em.added), and has twice tried to litigate in this Court unsuccessfully. The compensatory damage remedy she seeks against Judge Hamilton is barred by the doctrine of absolute immunity afforder judges for judicial actions clearly within their jurisdiction. Stump v Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 88 L.Ed 2d 331(1978); Pierson v Ray, 386 U.S. 547, 87 S Ct. 1213, 18 L Ed. 2d 288(1967). Although a state judges is not immune from actions for injunctive relief, Pullian v Allen, __ U.S. __, 104 S.Ct. 1970(1984), the injunctive relief sought has previously been fully litigated in State Court as well as here. This Court may take judicial notice of its own cases and actions therein.

This case is frivolous, malicious, and harassing(sic). This Court has inherent power to prevent abuse of its process and prevent injustice. This case is dismissed with prejudice. No process shall issue, but a copy of this memorandum and

Order will be mailed defendants. The plaintiff is enjoined from filing any further litigation in this Court regarding the sale of this property or the state litigation surrounding sale of such property without express permission of this Court.

Signed Thomas A Wiseman Jr.

THOMAS A WISEMAN ,JR.
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NOV 13 1985

By S. Tipton
Deputy Clerk

EARLENE POLYAK

Civil Action No.1:85-0016
Judge Wiseman

vs

JIM T. HAMILTON, Individually and in his
judicial capacity as
Circuit Judge, Jointly and severally and The
CIRCUIT COURT OF LAWRENCE COUNTY

ORDER

For the reasons in the Memorandum contemporaneously filed herewith, the application for extraordinary releif is denied and the case is dismissed on the Court's own motion. No process shall but a copy of this memorandum and Order will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN

BUFORD EVANS 7 sons

vs

CIVIL ACTION NO.: 10657

EARLENE POLYAK

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED to the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985.

Signed Jim T. Hamilton
JIM T. HAMILTON
CIRCUIT JUDGE
PART 1

- 39 -
IN THE CHANCERY COURT
FOR
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

Plaintiffs

VS

No. 1974

EARLENE POLYAK

MEMORANDUM BRIEF

On July 29, 1983, a hearing was held in the above styled cause before the Honorable Jim T. Hamilton, by consent of all parties and their counsel, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) whether the subjected property can be partitioned in kind or, alternatively, whether it is manifestly to the advantage of the parties that it be sold for partition or so situated that it is not feasible or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance upon which Defendant has made substantial improvements on the house situated on subject property.

This action is governed partly by the provision of Statute at TCA 29-27-201, et seq. It is also governed by a substantial body of case law,

BEST AVAILABLE COPY

The cost of improvements made can be allowed to such a co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the property.

Wilburn v Kingsly, 3 Tenn. App. 88

If exact partition can not be made without material injury to the parties, or some one of them (the Commissioners), may make partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares, and report the facts.

T.C.A. 29-27-549

Hardin vs. Cogwell, 52 Tenn. 549

Burdett vs. Norwood, Tenn. 491

COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case does not act merely in a ministerial capacity, but founds itself on general principles of equity according to its own notion of equal justice and equity between rights of the parties interested.

Sproles vs. Gray, 296 S.W. 2d 839

PROOF IN CASE

No summary will be made of the proof adducted at trial. The Court has its own notes and rec-

Original 11 1983

*Ord & Walker Book Order Book & Hall
Signed L. Thomas Stock.*

<u>Date</u>	<u>Services</u>	<u>Hours Spent</u>
10/26/84	Preparation of reponses on District Court pleadings. <u>(Decision on case No. 1:84-0082, on</u> <u>October 26, 1984, these charged to</u> <u>1:84-0083. After denial by Court</u>	.60
10/29/84	Preparation of responses to Polyak's subsequent District court pleading. with <u>W. E Boston (father)</u> re status of pending matters.	.60
10/31/74	Research for res judicata effort of plaintiff's state court law- suit.	.40
11/01/84	Review of file preparation of motion to dismiss	.20
11/05/84	Preparation of status of Polyak pleadings motions telephone <u>conference with counsel (father).</u>	.20
11/08/84	Preparation of memo brief re response to Plaintiff's com- plaint in District Court	1.10
11/9/84	Review of Tennessee Court of Appeals Tennessee Supreme Court files, revision of memo. for defendants.	1.90

11/12/84 Preparation of motion and memo on10
on behalf defendants

11/13/84 Review of Polyak's pleadings, letter .10
Lawrence County Clerk & Master

11/19/84 Preparation and certification records .10
(duplication)

11/21/84 Preparation of supp. memorandum .10

11/25/84 Telephone call W.E Boston(father) .10

12/05/84 Review memo. telephone conference .10
with W.E. Boston(father) 1.20

12/07/84 Preparation and revision and correction
in affidavit letter to W.E. Boston
(father) .80

total hours spent 12.60

Photo copies \$37.80
Long distance 66.96
\$104.76

Signed Robert Boston
Robert Boston

Note: Mr. Boston entered attorney costs and fees in the Court of Appeals without serving and allowing Appellant to object and all efforts to get a recall of mandate were disregarded by clerk.

Appellant believes she has been denied due process and these long distance calls were to his father William Boston who lives in Lawrenceburg, Tennessee.

The above costs and attorney fees were copied from Affidavit submitted to the United States District Court by Mr. Robert Boston.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL PRE ARGUMENT STATEMENT

FRANK HULEN AND WILMA LESNANSEY	District Sixth	Judge Wiseman
<hr/>		
v. EARLENE POLYAK Defendant	Com. Filed Docket No. 10/1/84 1:84-0082	

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield, Trenton, Mi.48183	(313)676-3364
Plaintiff		
ROBERT BOSTON	2100 One Commerce Place Nashville, Tenn. 37239	(615)244-6380

Check as many as apply		
A. Jurisdiction	District Court Disposition	Relief

X Federal Question	X Final	X Damages
X Diversity	Decision of	amount sought
	District Court	<u>\$60,000.00</u>
X No Trial		

NATURE OF SUIT	
XCivil Rights	X Real Property

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT

EARLENE POLYAK Plaintiff	District Sixth	Judge Wiseman
v. FRANK HULEN AND WILMA LESNANSKY	Com. Filed 10/18/84	Docket no. 1:84-0083

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield Dr. Trenton, Mi.	(313)676-3364
APPELLEE		
Defendant		
ROBERT BOSTON	2100 One Commerce Place, Nashville, Tenn. 37239	(615)244-6380

Check as many as apply

A. Jurisdiction	District Court	Relief
	Disposition	

<input checked="" type="checkbox"/> Federal Question	<input checked="" type="checkbox"/> Final	<input checked="" type="checkbox"/> Damages
<input checked="" type="checkbox"/> Diversity	Decision	Amount sought
	of District	<u>\$60,000.00</u>
	Court	
	<input checked="" type="checkbox"/> No Trial	

NATURE OF SUIT

<input checked="" type="checkbox"/> Civil Rights	<input checked="" type="checkbox"/> Real Property
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